

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3591.2, Subsection (a)

Oriental Fruit Fly Eradication Area

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance
the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry from the movement and spread of injurious plant pests within California.

Specific Purpose and Factual Basis

The specific purpose of Section 3591.2 is to provide authority to the State to eradicate infestations of *Bactrocera dorsalis*, Oriental fruit fly, from within the declared eradication area by the established means and methods.

The factual basis for the determination by the Department that the amendment of this regulation is necessary is as follows:

Oriental fruit fly is a destructive insect pest of innumerable commercial agricultural crops. Fruits (including nuts, dates, and berries), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the Oriental fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms which cause tissue breakdown. Damaged fruit is generally unfit for human consumption. The fly can be artificially spread by movement of hosts which are infested with the fly.

Adult Oriental fruit flies have recently been trapped in the county of Santa Barbara. On July 26, 2006, two mature male Oriental fruit flies were taken from a trap in the Santa Barbara area of Santa Barbara County. These finds of the fly are indicative of an incipient infestation of Oriental fruit fly in the Santa Barbara area of Santa Barbara County.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

Additionally, the immediate implementation of this proposed regulatory action is necessary to prevent the USDA, APHIS from considering the entire state as infested with Oriental fruit fly, rather than just the current area of Santa Barbara County. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

The Oriental fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this is a ministerial action for an emergency and an action also for the protection of natural resources and the environment by a regulatory agency and is therefore exempt from the requirements of the CEQA statutes, under PRC Section 21080, and under Sections 15268, 15269, 15307 and 15308 of the CEQA Guidelines.

The amendment of this eradication regulation proclaimed Santa Barbara County as an eradication area. The entire county of Santa Barbara is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established Oriental fruit fly infestation. Fruit which may have already been moved from the infested area to another portion of the county and flies which may have already spread naturally from the infested area may have already resulted in small infestations outside the known infested area. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area. In addition, amendment of the reference citation is proposed to list the individual applicable section numbers instead of providing the first and last section numbers only.

This regulation provides authority for the State to perform control and eradication activities against Oriental fruit fly in Santa Barbara County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it was necessary to immediately begin treatment activities against the Oriental fruit fly. Therefore, it was necessary to amend this regulation as an emergency action.

Estimated Cost of Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that Section 3591.2(a) does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the amendment of 3591.2(a).

The cost impact of the changes in the regulations on private persons and businesses are expected to be insignificant.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California business, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

The emergency amendment of Section 3591.2(a) provides authority for the Department to conduct eradication activities against Oriental fruit fly within Santa Barbara County and there are no known private sector cost impacts.

Assessment

The Department has made an assessment that the repeal of the regulation would not 1) create or eliminate jobs within California; 2) create new business or eliminate existing businesses with California; or 3) affect the expansion of businesses currently doing business with California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption and subsequent amendment of Section 3591.2:

“Pest and Damage Record #1408436,” dated July 26, 2006, California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“Action Plan for Methyl Eugenol Attracted Fruit flies, including the Oriental Fruit Fly, *Bactrocera dorsalis* (Hendel),” April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (11 pages).